

~~INITIAL~~ FINAL STATEMENT OF REASONS

~~January 2,~~ May 2004

Title 14. Natural Resources

Division 7. California Integrated Waste Management Board

**Chapter 6. Permitting Of Waste Tire Facilities and Waste Tire
Hauler Registration and Tire Manifest**

**Article 8.5 Waste Tire Hauler Registration and Manifesting
Requirements for Used and Waste Tire Haulers,
Tire Dealers, Used and Waste Tire Generators, and
Used and Waste Tire End-Use Facilities**

~~§18460.1~~ 18453 - 18465

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

With the passage SB 744 (McCorquodale, 1993) and the subsequent regulations, the California Integrated Waste Management Board (Board) has been regulating the transportation of used and waste tires. Waste Tire Hauler Registration standards were designed to prevent environmental catastrophes and adverse impacts to public health and safety due to improper transportation and storage of used or waste tires. AB 117 (Escutia, 1998) was signed into law requiring the Board to prepare a report to the legislature on the current waste tire program and to make recommendations by June 30, 1999 for needed changes. The Board adopted the final version of the report entitled "California Waste Tire Program Evaluation and Recommendations" at its June 22, 1999 meeting. SB 876 (Escutia, 2000) was passed by the Legislature changing the tire statutes to better serve the regulated community and to protect public health and safety and the environment. Most of the changes that were incorporated in the regulations that became effective July 1, 2003, were the result of either the passage of SB 876, or recommendations in the AB 117 Report, as well as, changes that were made based on administering these regulations for the past 6 years.

Earlier this year, emergency regulations were enacted to establish the amount of administrative penalties imposed against waste and used tire haulers who have violated applicable laws. In addition, revisions have been made to the manifest regulations. The regulations made changes in the existing regulations to implement, interpret and make specific the provisions of SB 876 (Escutia, 2000), as well as correct errors, add language to make the regulations more functional,

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and delete unnecessary language. The Office of Administrative Law has extended the effectiveness of the emergency regulations until March of 2004.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS & ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS.

DECLARATION FOR SUBSEQUENT STATEMENT OF REASONS

The following response shall be used for the requirement that the above finding be made for each proposed regulatory action.

The Board has determined that:

- No alternatives to the proposed regulatory actions would be as effective and less burdensome to private persons while protecting human health, safety, and the environment,
- There are no other alternatives to the proposed regulatory actions that would lessen adverse economic impact on small business while protecting human health, safety, and the environment.

The proposed regulations will not add any substantively new regulatory requirements for the waste tire generators, tire dealers, and end-use facilities.

INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

DECLARATION FOR SUBSEQUENT STATEMENT OF REASONS

CIMWB staff made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. In making this determination, the CIWMB relied upon an analysis by Cal/EPA's Agency-wide Economic Analysis Program.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

DECLARATION FOR SUBSEQUENT STATEMENT OF REASONS

The following response shall be used for the requirement that for each proposed regulatory action that each study, report, or document relied upon, if any, must be identified.

The Board relied upon the following in proposing the adoption of these proposed regulations:

- Existing statute and regulation.

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- Public board and committee meetings held by the CIWMB, both to implement the emergency regulations and to obtain approval to proceed with the final rulemaking.

LOCAL MANDATE AND FISCAL DETERMINATIONS

DECLARATION FOR SUBSEQUENT STATEMENT OF REASONS

CIWMB staff has determined that the proposed regulations do not impose: 1) a mandate on local school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code section 17500 through 17630; 4) other non-discretionary costs or savings on local agencies; 5) costs or savings in federal funding to the state.

FINDING ON NECESSITY OF REPORTS

DECLARATION FOR SUBSEQUENT STATEMENT OF REASONS

CIWMB has found that the requirement for specific reports are necessary for the health, safety, and welfare of the people of the state because it will help to ensure that the standards in Article 8.5 are met by operators and adequately monitored by the CIWMB or enforcement agencies.

DUPLICATION OR CONFLICTS WITH CODE OF FEDERAL REGULATIONS

DECLARATION FOR SUBSEQUENT STATEMENT OF REASONS

No duplication or conflict exists between the proposed regulations and federal regulations contained in the Code of Federal Regulations because Federal law or regulations do not contain comparable requirements.

§ 18453 - Language was added/deleted for clarity and consistency.

§ 18453.2 - Language was added/deleted for clarity and consistency.

§ 18456.4(a) – The term “unique decal number” was added to the description of the temporary registration certificate to clarify that a decal number (unique from the other decal numbers assigned to the registered hauler’s vehicles) would be assigned to the temporary vehicle.

§ 18457(e) - This new proposed section is designed to close an existing loophole for waste and used tire haulers where the hauler's registration has been denied, suspended or revoked for illegally dumping tires or other violations. Under present regulations, a registered waste and used tire hauler may add a new vehicle and driver (owner of vehicle) by simply checking the box “Add/Delete Vehicle” on the Waste Tire Hauler Registration Application (Form CIWMB-60) and filling in the appropriate information, before submitting it to the CIWMB. There is nothing preventing a hauler from continuing to operate under another hauler’s registration or putting his/her vehicles under that haulers registration. In addition, a driver that may have been responsible for a hauler being disciplined may continue to operate under another waste tire

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hauler's registration or have a vehicle added under another waste tire hauler's registration. The addition of proposed Section 18457(e) will prevent haulers and drivers from operating under a different registered hauler or assigning their vehicles to a different registered hauler when the hauler's registration has been denied, suspended or revoked, or the driver is responsible for a disciplined registration.

§ 18459.1(d) – The purpose of requiring the operator to display a certificate with the TPID number in a conspicuous place is so that any one inspecting a facility will be able to readily determine whether a business has a TPID number.

§ 18460.1 Reference: - language was added/deleted for clarity and consistency.

§ 18460.1 (a) – The manifest statute (Public Resources Code section 42961.5) provides that a generator or waste tire hauler must manifest any used or waste tires hauled as determined by the Board. PRC section 42961.5(b) provides:

“Any person generating waste or used tires that are transported or submitted for transportation, for offsite handling, altering, storage, disposal, or for any combination thereof, shall complete a California uniform Waste and Used Tire manifest, as required by the Board.”

The existing section 18460.1 (a) states:

“The agricultural exempt waste tire hauler shall not transport any used or waste tires without having a copy of the Manifest Form and Tire Trip Log in the vehicle while transporting the waste tires...” (underline added for emphasis)

This makes the manifesting requirement for the agricultural exempt waste tire hauler consistent with the manifesting requirements for unregistered haulers who are exempt from the manifesting requirements if they haul fewer than 10 used or waste tires at any one time. Therefore, the word “any” is replaced with “10 or more” in the proposed changes to the regulations.

§ 18460.1.1 Reference: - language was added/deleted for clarity and consistency.

§ 18460.1.1 (a) The proposed change to this section is identical to the above change for the agricultural exempt waste tire hauler. This section, however, relates to the common carrier. Please see the comments for Section 18460.1(a).

§ 18460.2 Reference: - language was added/deleted for clarity and consistency.

§ 18460.2 (b) - Language is added/deleted to this subsection for further clarity. The words “registered” and “any” have been added to clarify that this subsection applies only to registered waste tire haulers and that for each shipment of any number of tires a separate Manifest Form and Tire Trip Log is to be completed.

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§ 18460.2 (i) – The addition of this subsection is necessary to make this section consistent with the changes proposed in Sections 18460.1(a) and 18460.1.1(a). Please see the discussions above for Sections 18460.1(a) and 18460.1.1(a).

§ 18460.2 Reference: - language was added/deleted for clarity and consistency.

§ 18460.2 (j) - This subsection is added to make the existing requirements less burdensome for unregistered haulers who are involved in an Amnesty Day Event or a One-Time Exemption authorized by the Local Enforcement Agency in writing. Currently these unregistered haulers must comply with the manifesting requirements of this section if they haul 10 or more used or waste tires. The proposed change will require unregistered haulers to comply with the manifesting requirements of this section if they haul 20 or more used or waste tires involving an Amnesty Day Event or a One-Time Exemption.

§ 18461 (c) - Language is added/deleted for consistency. The addition and deletion of language in this subsection is necessary to make this section consistent with the proposed change made in subsection 18460.2(j). Please see the comments for subsection 18460.2(j).

§ 18461 Reference: - language was added/deleted for clarity and consistency.

§ 18464 – The addition of this section will allow the Board to establish the amount of administrative penalties imposed against tire haulers who have violated applicable laws. This will allow the Board to more effectively use administrative penalties as an enforcement tool against tire haulers, and will make the Board’s regulations consistent with statutory changes. Prior to the most recent rulemaking, the Board had set the maximum administrative penalty for tire haulers at \$1,000 in regulations pursuant to statute, and had set criteria to use in determining, on a case-by-case basis, the amount of penalty for a given violation. In 2000, Senate Bill (SB) 876 (Escutia, 2000) amended Public Resources Code (PRC) section 42962(c) to increase the administrative penalty that could be imposed upon a tire hauler to five thousand dollars (\$5,000) per violation of a “separate provision” or \$5,000 per day for a continuing violation. This statute requires the Board to adopt regulations specifying the amounts for the imposition of administrative civil penalties. Penalty Tables I and II take into account whether the tire hauler’s actions are a first or subsequent offense, the type of violation, the number of violations, and the number of waste or used tires involved. This schedule of administrative penalties provides the regulated community and the trier of fact hearing the case with a consistent, predictable method of enforcement. Finally, the potential violations involved in these cases lend themselves to an objective fine schedule. Current regulations (14 CCR 18465) provide the following general criteria to consider when determining the amounts of administrative penalty on a case-by-case basis:

- (1) The nature, circumstances, extent, and gravity of the violation.
- (2) Evidence that the violation was willful or negligent.
- (3) The good or bad faith exhibited by the party.
- (4) History of violation of the same or similar nature.
- (5) The extent to which the party has cooperated with the Board in remediating the violation.

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- (6) The extent that the party has mitigated or attempted to mitigate any damage or injury caused by his or her violation.
- (7) Evidence of any financial gain resulting from the violation.
- (8) Such other matters as justice may require.

These criteria were used on a case-by-case basis to determine the penalty by choosing a dollar amount from a range of \$0 to the maximum allowed, \$1,000. This approach is more subjective than what staff is proposing in Tables I and II. The penalty schedule provides a limited range of penalties for a given violation which takes into account the tire hauler's culpability by considering the number of previous violations committed, and the number of tires hauled.

§ 18464(b)(1)- This subsection presents Penalty Tables I and II and the instructions for how to use these tables. The trier of fact applying Table I would first determine what violations have occurred using the first two columns of the table. A dollar amount range is then selected from the third through fifth columns based on the number of offenses. The dollar amount for the individual offenses is then totaled to determine the applicable fine.

§ 18464(b)(2)- The process for unregistered haulers is similar to the description for Paragraph (b)(1) with three exceptions. First, Table II is based on only one violation for unregistered hauling (PRC section 42951(a)). Second, the number of tires hauled is a factor. Third, the penalty from this table may be added to any applicable violations from Table I.

§ 18465(b)- This subsection is deleted, because it is duplicative. See PRC Section 42962.